

Employment Law

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SOUTH AFRICA

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What you need to know about the Fair Pay Bill

The Fair Pay Bill (Bill) was proposed by the political party Build One SA (BOSA) in June 2025. The Bill aims to amend the Employment Equity Act 55 of 1998 (EEA) by introducing a prohibition on the use of historical remuneration information in recruitment processes and making it mandatory to disclose remuneration or remuneration ranges for purposes of job classification and grading, and when advertising positions for applications.



Facts

The aim of the Bill is to promote remuneration transparency to help address the pay gap, gender pay and the issues linked to South Africa's Gini coefficient status.

The Bill aligns with pay transparency and promotes responsible business imperatives developing globally.

Proposed amendments to the EEA

The Bill seeks to introduce these key requirements:

- Employers will be required to disclose remuneration, or where necessary, the anticipated remuneration range when recruiting, including advertising positions, appointing, promoting, or transferring employees.
- Employers will no longer be permitted to inquire about a job applicant's past remuneration information during recruitment, selection, or appointment processes for the purpose of determining an employee's or applicant's remuneration or terms and conditions of employment unless: (i) an offer of employment has already been made, and (ii) the candidate requests, in writing, that the employer consider their past remuneration.
- Employers will be required to establish the remuneration or a remuneration range for each role.
- Employers may discuss the employee's remuneration expectations within the determined range, without inquiring into past remuneration.
- Confidentiality clauses preventing employees from discussing remuneration will become unlawful.



What you need to know about the Fair Pay Bill

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Impact on employers and employees

Employers

The Bill introduces compliance requirements and creates opportunities for employee-value propositions and competitive advantages for employers.

The benefits of transparent compensation and upfront remuneration information include attracting genuinely interested and qualified candidates, thereby reducing wasted resources on mismatched applications.

The Bill may help employers to mitigate their exposure to claims of unfair labour practices and unfair discrimination, which can be costly and damaging to their reputation.

Transparent pay practices can enhance employee engagement and retention by fostering trust in management decisions.

Challenges include assessing and determining value for jobs where there are no historical remuneration benchmarks available and where pay structures tend to be less formal, such as in cases of highly specialised or new jobs and freelance-work heavy industries. Furthermore, the Bill will adversely impact the small, medium and micro enterprises from an affordability point of view.

To address these challenges, the Bill must make provision to cushion or protect small employers and industries with atypical workforces.

The Bill may impact market competition as competitors can easily view salary ranges in job listings. However, employers retain flexibility to advertise broad salary ranges as the Bill provides no calculation guidelines.

What you need to know about the Fair Pay Bill

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Impact on employers and employees...

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Employees

Employees should, in theory, have the benefit of having sight of remuneration ranges prior to applying for a particular position and will not be held to their historic remuneration should they choose not to disclose this.

Employees gain the explicit right to discuss remuneration openly with others. While this right already exists under section 78 of the Basic Conditions of Employment Act 75 of 1997, the Bill expressly permits sharing of past and present remuneration, thus rendering confidentiality clauses that seek to bind employees to secrecy when it comes to their remuneration unlawful.



Next steps

BOSA has tabled the Bill with the National Assembly, beginning the legislative process.

The Bill will first undergo legal review before Parliament's legal advisors to ensure compliance and proper categorisation of the Bill. It will then be published in the *Government Gazette* for public comment. The Portfolio Committee on Employment and Labour will review it for in-depth debate and technical scrutiny. Finally, the Bill will be formally introduced in the National Assembly for deliberation, potential amendment, and voting.

What you need to know about the Fair Pay Bill

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Key takeaways

- If enacted, employers will need to update their recruitment and pay practices to comply with the Bill's provisions, which may include revising application forms, interview protocols and internal policies around salary setting.
- Employers should conduct audits to assess remuneration and remuneration structures to identify any unjustifiable pay gaps, comparing remuneration across roles, race, genders, backgrounds and unconscious biases.
- Employers should record valid reasons for differences in remuneration, such as a person's skills, tenure, qualifications and experience, or performance.
- Training surrounding remuneration and remuneration structures should also be provided to ensure compliance and fairness, as well as to strengthen the employer's competitiveness.
- Keep abreast of changes in market conditions via compensation planning tools and software that conducts benchmarking to provide companies with up-to-date, market-related salary information to remove reliance on employee salary histories.



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**Conclusion**

The Bill marks a significant step toward establishing equitable and transparent pay practices in South Africa. By eliminating reliance on past remuneration and mandating upfront disclosure, the Bill empowers both employers and employees to engage in fairer, more informed employment negotiations. If enacted, it will have a significant impact on employers, in that it will reshape recruitment norms and strengthen compliance with employment equity principles. Aligned with global trends toward pay transparency and fairness, the Bill reflects a growing international imperative to address pay inequality and promote equity.

**Yvonne Mkefa, Sashin Naidoo
and Thato Makoaba**

**Chambers Global
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**EMPLOYMENT LAW
ALERT**

The Labour Court draws the line on interdicting unprotected strikes in *Boomerang Fruits v MKP*

The recent decision of the Labour Court in *Boomerang Fruits (Pty) Ltd v uMkhonto weSizwe (MKP) and Others* [2025] JDR2025-061014 (LC) provides timely clarification on the legal thresholds for interdicting unprotected strikes and the limits of third-party involvement, particularly by political parties, in industrial disputes. The judgment reaffirms the legal materiality of procedural norms under the Labour Relations Act 66 of 1995 (LRA), as amended, and outlines the risks for entities that engage in conduct akin to that of a trade union without being recognised as such.



Factual background

The matter arose from an operational dispute at Boomerang Fruits (Boomerang), a fruit producer in Elgin. On 25 April 2025, the company discovered a payroll error that led to approximately 35 packhouse workers being underpaid between R120 and R176 for overtime. Management assured staff the discrepancy would be rectified. Despite this, workers failed to report for duty the following day, prevented transport from collecting employees, and initiated protest action.

Shortly thereafter, the uMkhonto weSizwe Party (MKP) entered the dispute. Its local representatives, including a councillor and members of its 'labour desk', engaged directly with employees and management. The MKP issued public statements, represented workers in a mediated process at the South African Police Service, and actively promoted the protest through media and social platforms.

Although the underpayments were corrected and workers were called back to work, the industrial action continued. Boomerang sought urgent relief in the Labour Court to interdict the unprotected strike and the involvement of the MKP.



Band 1
Employment



The Labour Court draws the line on interdicting unprotected strikes in *Boomerang Fruits v MKP*

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Legal framework and core issues

The LRA permits strikes where procedural steps under section 64(1)(a) are met. This includes the referral of the dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) or applicable bargaining council and the lapse of a 30-day conciliation period, any agreed upon extended period, or the issuing of a certificate of non-resolution, whichever occurs first. This must be followed by 48 hours' notice of strike action. Non-compliance renders the strike unprotected and unlawful.

The application before the court concerned:

- whether the strike was unprotected under the LRA;
- whether the MKP's conduct warranted the granting of interdictory relief against it; and
- the appropriate apportionment of legal costs.



The Labour Court draws the line on interdicting unprotected strikes in *Boomerang Fruits v MKP*

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Findings of the Labour Court

The court found that the strike was unprotected. The employees had failed to refer the dispute to the CCMA, and did not follow the other statutory dispute resolution steps, including giving 48 hours' notice of a strike. The failure to follow the statutory dispute resolution process rendered the strike unprotected.

Significantly, the court found that the MKP had acted far beyond an advisory role. It performed functions typically undertaken by a registered trade union by representing workers in mediation attempts and orchestrating the strike. However, it also behaved in a vexing manner by objecting to and obstructing the employer's right to representation; calling for audits of working conditions on the farms, which it was not empowered to do; insulting the management representative; and issuing media statements that were defamatory and contained falsehoods.

The court referred to a growing body of case law, including *Calgan Lounge (Pty) Ltd v EFF* [2019] 40 ILJ 342 LC, *Langplaas Boerdery CC v Matshini* [2021] 42 ILJ 1210 (LC), and *CCI SA (Pty) Ltd v ANC Youth League* [2024] 45 ILJ 969 LAC, which draws a clear boundary around the lawful role of political parties in labour disputes.

Judge Lagrange held that the MKP functioned as a "*de facto trade union*" and thereby contravened the labour law framework. The involvement of the MKP blurred the statutory lines and directly contributed to the prolongation of the unlawful strike.

The interim interdict was confirmed, restraining both the employees and the MKP from encouraging or participating in the unprotected strike. The court declined to confirm relief regarding alleged acts of intimidation due to insufficient evidence.

The court ordered:

- the MKP to pay half of Boomerang's legal costs, including the costs of two counsel;
- the law firm representing the individual respondents to show cause why it should not be liable for wasted costs arising from a late withdrawal from the matter; but
- no cost order against the individual employees, in recognition of their ongoing employment relationship and lack of opposition to the final relief.

The Labour Court draws the line on interdicting unprotected strikes in *Boomerang Fruits v MKP*

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Significance of the judgment

This case reaffirms established strike procedure, but it has a novel element for its treatment of political actors in industrial relations. The Labour Court sent a strong message that political parties may not conduct themselves as substitutes for trade unions and that employers have legal recourse where they do. The Labour Court took issue with the MKP issuing inflammatory media statements accusing the employer of racism if its only role, on its version, was to advise employees of their rights. The MKP's assertions in that regard were improbable.

The judgment illustrates that courts are prepared to scrutinise and sanction politically motivated interference in employment matters to determine if same goes beyond an advisory one.



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Key takeaways

- Strike procedure compliance: Employers are entitled to interdict strike action that does not comply with dispute resolution mechanisms in the LRA.
- Third-party intervention: Political parties that act beyond an advisory role – particularly by assuming representative functions – may face interdictory relief and adverse cost orders.
- Urgent relief available: Employers should act expeditiously when seeking urgent interdicts to minimise operational harm and preserve industrial peace.
- Cost orders as a deterrent: Courts are increasingly willing to apportion costs to political or legal actors whose conduct frustrates statutory dispute resolution processes.

**Fiona Leppan, Biron Madisa
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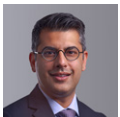
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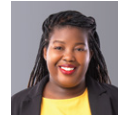
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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